In the Matter of WARREN TEXTILE PRINT WORKS, INC. *and* FEDERATION OF DYERS, FINISHERS, PRINTERS, AND BLEACHERS OF AMERICA

Case No. C–859.—Decided October 6, 1939

Textile Printing Industry—Interference, Restraint, or Coercion: threats to close plant down if affiliated union were established in plant; advocacy of an unaffiliated union by respondent's officer—*Discrimination:* discharges and refusals to reinstate; charges of, dismissed.

Mr. Benjamin Gordon, for the Board.

Salny and Salny, by *Mr. Samuel Salny*, of Fitchburg, Mass., for the respondent.

Mr. Alfred Udoff, of New York City, for the Union.

Mr. Allan Lind, of counsel to the Board.

DECISION

AND

ORDER

STATEMENT OF THE CASE

Upon charges duly filed by Federation of Dyers, Finishers, Printers, and Bleachers of America, herein called the Union, the National Labor Relations Board, herein called the Board, by the Regional Director for the First Region (Boston, Massachusetts) issued its complaint dated June 27, 1939, against Warren Textile Print Works, Inc., West Warren, Massachusetts, herein called the respondent, alleging that the respondent had engaged in and was engaging in unfair labor practices affecting commerce, within the meaning of Section 8 (1) and (3) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. Copies of the complaint, accompanied by notice of hearing, were duly served upon the respondent and upon the Union.

In respect to the unfair labor practices, the complaint alleges, in substance, that the respondent, on or about December 10, 1937, laid off or discharged six named employees [1] because they engaged in activities for and in behalf of the Union, as well as in other concerted activities with other employees of the respondent for the purpose of

[1] Stanley Cembura, Roman Orzulak, Rudolph Kalita, Horace Orzulak, Adam Luscynski, and Frank Watson.

collective bargaining and other mutual aid and protection; that the respondent has at all times since December 10, 1937, refused to reinstate said employees in order to discourage concerted activities on the part of other employees of the respondent; that by the aforesaid acts and refusals to act the respondent did discriminate and is discriminating in regard to the hire and tenure of said employees; and that by the aforesaid acts and refusals to act, and by other acts, the respondent did interfere with, restrain, and coerce, and is interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed them by Section 7 of the Act.

In its answer dated June 28, 1938, the respondent denied the alleged unfair labor practices.

Pursuant to the notice, a hearing was held at Worcester, Massachusetts, on July 5 and 6, 1938, before Mapes Davidson, the Trial Examiner duly designated by the Board. The Board and the respondent were represented by counsel and participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing upon the issues was afforded all parties. During the hearing counsel for the Board moved to dismiss the allegations of the complaint with respect to Frank Watson, one of the employees alleged therein to have been discharged discriminatorily on December 10, 1937. Watson did not testify. The motion was granted by the Trial Examiner. During the course of the hearing other rulings were made by the Trial Examiner on motions and on objections to the admission of evidence. At the close of the hearing counsel for the Board moved to conform the pleadings on the case to the proof. The motion was granted without objection. The Board has reviewed the rulings of the Trial Examiner and finds that no prejudicial errors were committed. The rulings are hereby affirmed.

On August 25, 1938, the Trial Examiner filed his Intermediate Report, a copy of which was duly served on all parties, finding that the respondent had engaged in and was engaging in unfair labor practices, within the meaning of Section 8 (1) and (3) and Section 2 (6) and (7) of the Act. He recommended that the respondent cease and desist from such practices and reinstate with back pay the five employees named in the complaint, as amended, and take certain other affirmative action to remedy the situation brought about by the respondent's unfair labor practices.

On September 3, 1938, the respondent filed exceptions to the Intermediate Report. Thereafter the respondent and the Union filed briefs with the Board. On September 7, 1939, pursuant to a request by the respondent, oral argument was had before the Board, at Washington, D. C. The respondent was represented at the oral argument.

The Board had considered the exceptions to the Intermediate Report and the briefs filed by the parties. For reasons set forth below, we sustain the exceptions to the findings of the Trial Examiner that the respondent engaged in unfair labor practices, within the meaning of Section 8 (3) of the Act. We find all of the other exceptions to be without merit in so far as they are inconsistent with the findings, conclusions, and order set forth below.

Upon the entire record in the case, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

Warren Textile Print Works, Inc., is a New York corporation duly qualified to do business in Massachusetts. It is engaged in the business of printing figures and designs on textile materials. It operates a plant in West Warren, Massachusetts, and maintains an office and salesroom in New York City. The bulk of the respondent's business consists of contract work whereby it undertakes to print designs, figures, or patterns on textiles owned by other persons. The fabrics are shipped to the respondent in an unfinished form, whereupon the respondent prints the particular design ordered by the customer and ships the finished product back to the owner. Approximately 90 per cent of the fabrics processed by the respondent are shipped to the respondent from, and after being processed are reshipped by the respondent to, points outside Massachusetts. The raw materials used by the respondent in its business consist of dyes, gum, and chemicals, all of which are shipped to the respondent from points outside Massachusetts. The total business of the respondent is in excess of $100,000 a year.

II. THE ORGANIZATION INVOLVED

Federation of Dyers, Finishers, Printers, and Bleachers of America, is a labor organization affiliated with the Committee for Industrial Organization. It admits to membership employees engaged in the dyeing, bleaching, finishing, mercerizing, weighting, printing, or other processing of silk, rayon, and cotton or of any mixture of the same.

III. THE UNFAIR LABOR PRACTICES

A. *Background*

Prior to September 1936, Louis Endelson, president of the respondent, and his sons Edward and Jack Endelson, vice president and secretary, respectively, of the respondent, operated a dye plant in New York City known as the Century Dye Textile Print Works.

A contract existed between the Century Dye Textile Print Works and the New York local of the Union. According to the testimony of Jack Endelson, this contract expired in September 1936 and provided that during its term the Union would refrain from striking. In June or July 1936, the New York local called a strike and insisted that the management sign a 2-year contract with the Union. The respondent claims that the strike was called in violation of the agreement between the parties and the terms of the new contract submitted by the Union were unreasonable. That the contract was demanded and the strike called because of the Union's fear of a run-away shop is suggested by the fact that as early as July 8, 1936, the respondent registered to do business in Massachusetts. In any event, the Century Dye Textile Print Works refused to accede to the demands of the Union, the strike kept the plant shut, and in September 1936 the respondent opened its plant in West Warren, Massachusetts.

It is clear from the evidence set forth above that the Endelsons left New York City to avoid the consequences of the Union's demand for a new contract. With this background in mind we are in a better position to evaluate the following events.

B. *Interference, restraint, and coercion*

On a Friday evening in September 1937 two union organizers approached Alfred Nutter, employed by the respondent as a printer, and asked him if he would be interested in organizing the respondent's employees. Nutter replied that he was not interested at the time. The respondent's plant was not scheduled to operate the next day. Nevertheless, Nutter went to the plant early the next morning to see Louis Endelson whom he told that, since he would probably hear of his meeting with a union organizer from some other source, he would rather tell Endelson himself. Nutter testified that Endelson then told him that if there was to be any union it must be a shop union; that he would not consider any outside organization coming into the plant; and that he would close up the plant before allowing an outside organization to become established. Following this conversation, which took place at approximately 8:30 a. m., Nutter returned home. About 9 a. m. an employee, using Endelson's car, went around the town instructing the printers to report to work at 9 o'clock. In accordance with these instructions Nutter reported to work. The men were ordered to do some minor work for a short period for which they were later paid a half-hour's wages. Then, according to Nutter, Endelson called the printers together and told them that if they wanted a union they should form a shop union; that he would be glad to have such an organization, but as far as any outside organization was concerned, he would shut down the plant before allowing it to become established.

Endelson denied the anti-union statements attributed to him by Nutter. However, he admitted that Nutter had informed him of his meeting with the union organizer, but stated that Nutter had merely told him that he had been approached by the organizer. Endelson also admitted that thereafter he had called a meeting of the screen printers, but offered no explanation for his action. He testified, however, that the only thing he could have spoken about "is that I think they are all satisfied to work for me, and I am treating them fairly and trying to do the best I can for them . . . and if they are not satisfied . . . I am always glad to let them come to me, and I am always glad to help them the best I can."

The Trial Examiner, who had an opportunity to observe the demeanor of the witnesses, resolved this conflict in testimony by finding in accordance with Nutter's version of the incidents. We are in agreement with the Trial Examiner's determination. The testimony of Nutter as to the sequence of events is persuasive, whereas Endelson's version is both incomplete and obviously disingenuous. Moreover, there can be no doubt upon the record that Endelson was opposed to any organization by the Union of the employees at the plant at West Warren. Not only does this appear from the circumstances respecting the opening of the plant, but Ferdinand Sylvia, a union organizer, testified without direct contradiction that on or about January 5, 1938, during a conference, Louis Endelson stated that he left New York City because of the Union and that if he had to meet with the Union in West Warren he would close his shop.

We find that the respondent, by stating to its employees that in the event of the organization of its plant by the Union it would shut down its plant, and by proposing the formation of an inside union rather than an outside organization, interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

C. *The alleged discriminatory discharges and refusals to reinstate*

No further attempt was made to organize the respondent's employees until November 27, 1937. At that time Frank Principe, superintendent of the respondent's plant,[2] arranged a meeting between Sylvia and Nutter. Nutter was persuaded to become active on behalf of the Union. He proceeded to sound out the sentiment among the employees and early in December advised Sylvia that the employees were ready to organize.

[2] Principe had worked for the respondent's management in New York City and had been a member of the New York local. He was expelled from the Union when he came to Massachusetts to work for the respondent late in the year 1936. Apparently he was seeking to render the Union a service which might result in his reinstatement.

On December 9, 1937, the Union held its first meeting at Community Hall in West Warren. Three of the complainants, Stanley Cembura, Roman Orzulak, and Adam Luscynski, together with eleven other employees attended the meeting. Cembura and Orzulak joined the Union at the meeting. Luscynski had already joined the Union earlier in the day. The other two complainants, Rudolph Kalita and Horace Orzulak, signed application cards on December 10.

With the exception of Luscynski, whose case is discussed below, the complainants had been hired with a group of 9 or 10 other employees on or about November 20, 1937. On December 10, a regular pay day, all the employees hired on or about November 20, together with a few other employees, were discharged. The respondent asserts that it discharged the group as a whole because their employment had been followed by an epidemic of bad work which could not be traced to individual employees. The record supports this contention. The amount of damages occurring in the respondent's plant during the latter part of November and the early part of December, in comparison with other months, was quite extensive and resulted in the loss of two customers as well as making the respondent liable for the payment of damages resulting from the ruined goods. After the discharges the damages materially decreased. There is no evidence that the respondent knew of the union affiliation of the complainants at the time of their discharge and it was conceded that a number of other employees who joined the Union on December 9 remained in the employ of the respondent.

Immediately after December 10 the respondent proceeded to replace the discharged employees. On December 13, 1937, three of the complainants, Cembura, Kalita, and Roman Orzulak, together with Steve Motyka, who had also been discharged on December 10, sought reinstatement. There is no showing that the respondent even then knew of their affiliation with the Union. According to the testimony of the three complainants Louis Endelson refused them reinstatement, stating that there had been considerable bad work, and that he referred to Roman Orzulak as a "trouble maker" and "wise guy of the Union." Edward Endelson, who was present at the time the remarks were allegedly made, testified that he was positive that the word "union" was not mentioned.[3] Louis Endelson could not remember whether he had made the remarks attributed to him. Since there is no showing that Roman Orzulak had engaged in any union activities besides becoming a member, attending the meeting of De-

[3] Steve Motyka corroborated the testimony of Edward Endelson. However, it is apparent from the record that Motyka was not a credible witness as to any of his testimony.

cember 9, and signing up his brother Horace, we find no reason to believe that Endelson would have singled him out as the "wise guy of the Union," especially as no knowledge by the respondent of these limited activities is shown. We find that Endelson referred to Roman Orzulak as a "trouble maker." However, Endelson testified that he had regarded Orzulak as "troublesome" because he was slack in his work unless watched. Consequently, in the absence of any evidence indicating knowledge of Orzulak's union activities, we cannot find, despite our view that Endelson was anything but a frank witness, that Endelson's reference on December 13 was to anything other than Orzulak's alleged deficiencies as a worker.

Horace Orzulak sought reinstatement on December 13 and again on December 16, 1937. Each time he was denied reemployment without explanation. The respondent asserts that Horace Orzulak was not needed at the time he sought reinstatement and that he was not fitted for the type of work the respondent does. There is no showing that his affiliation with the Union was known to the respondent either when he was discharged or when he sought reinstatement on those occasions. In view of our findings respecting Roman Orzulak, the contention must fail that he was denied reinstatement because of his brother's union activities.

We find that the respondent has not discriminated in regard to the hire and tenure of employment of Stanley Cembura, Horace Orzulak, Rudolph Kalita, or Roman Orzulak because of their union affiliation or activity.

Adam Luscynski was hired by the respondent on July 24, 1937. He joined the Union on December 9 and attended the meeting held that night. He was discharged on December 10 together with the 14 or 15 other employees. The respondent contends that Luscynski's discharge was caused by his incompetency over a long period of time and that the immediate cause was his error in mixing colors on or about December 9, 1937.

Bolek Kulig, Luscynski's immediate superior, testified that Luscynski's work as a whole was unsatisfactory; that he made a number of errors during his employment; and that on the day prior to his discharge he made a mistake in making up a color which resulted in the ruination of 80 yards of material. Louis Endelson corroborated Kulig's testimony with respect to the character of Luscynski's work. Luscynski admitted making several mistakes during his employment and further admitted that he made the mistake ascribed to him on or about December 9, 1937. However, he adverted to the fact that he received two pay raises during the 5-month period of his employment as evidence of his competency. The respondent denied that these raises were given as a reward for good work but asserts they

were designed to encourage Luscynski in his work and make him a better worker.

While the case is not free from doubt, we are not convinced by the evidence that it was Luscynski's union activities or affiliation which led to his discharge. As noted above, it does not appear that the respondent was aware of Luscynski's union affiliation at the time the discharge took place.

We find that the respondent has not discriminated in regard to the hire and tenure of employment of Adam Luscynski, thereby discouraging membership in the Union.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

We find that the activities of the respondent set forth in Section III, B above, occurring in connection with the operations of the respondent set forth in Section I above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that the respondent, by stating to its employees that in the event of the organization of its plant by the Union it would shut down its plant, and by proposing the formation of an inside union rather than an outside union, interfered with, restrained, and coerced its employees in the exercise of the right guaranteed by Section 7 of the Act, we shall order the respondent to cease and desist from its unfair labor practices and to take certain other action which we deem necessary to effectuate the purposes and policies of the Act.

We have found that the employees named in the complaint were not discriminatorily discharged. We shall, therefore, dismiss the complaint as to these employees.

Upon the basis of the above findings of fact and upon the entire record in the case, the Board makes the following:

CONCLUSIONS OF LAW

1. The Federation of Dyers, Finishers, Printers, and Bleachers of America is a labor organization, within the meaning of Section 2 (5) of the Act.

2. By interfering with and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (1) of the Act.

3. The aforesaid unfair labor practices are unfair labor practices affecting commerce, within the meaning of Section 2 (6) and (7) of the Act.

4. The respondent has not engaged in unfair labor practices, within the meaning of Section 8 (3) of the Act.

ORDER

Upon the basis of the foregoing findings of fact and conclusions of law, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Warren Textile Print Works, Inc., West Warren, Massachusetts, and its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Stating to its employees that in the event of organization of its plant by Federation of Dyers, Finishers, Printers, and Bleachers of America, or by any labor organization, other than an unaffiliated organization, it would shut down its plant;

(b) Proposing to its employees the formation of an unaffiliated labor organization;

(c) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Post notices immediately in conspicuous places in its plant and maintain such notices for a period of at least sixty (60) consecutive days stating that the respondent will cease and desist in the manner set forth in 1 (a), (b), and (c) of this Order;

(b) Notify the Regional Director for the First Region in writing within ten (10) days from the date of this Order what steps the respondent has taken to comply herewith.

IT IS FURTHER ORDERED that the complaint, in so far as it alleges that the respondent has engaged in unfair labor practices, within the meaning of Section 8 (3) of the Act, be, and it hereby is, dismissed.